Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
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3 July 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the online harassment campaign and threats to life of journalist Mr. Glenn Grenwald, American journalist and editor of the online news publication « The Intercept », to his partner, congressional representative David Miranda, and their family. Similar threats were made against the Executive Editor of The Intercept in Brazil, Leandro Demori and other members of the outlet's editorial team.

According to the information received:

On 9 June, the online news publication *the Intercept* started a series of reports on alleged wrongdoing involving corruption investigations in Brazil known as the "Operation Car Wash". These reports were based on communications records shared by an anonymous source, and they raised ethical and legal questions about the conduct of the prosecutors team and the federal judge (currently Minister of Justice in Brazil) leading the "Operation Car Wash".

As soon as the news reports were published online, Mr. Greenwald and the news site were object of a massive online harassment campaign, started with a call for Mr. Greenwald's deportation from Brazil. Mr. Greenwald and his partner, Brazilian congressional representative, David Miranda also received direct threats of violence. The Executive Editor of the Intercept in Brazil, Leandro Demori and other members of the editorial team received similar repeated threats and the outlet's website was reportedly targeted by cyberattacks.

On 11 June, federal congressional representative Miranda, reported the intimidation campaign to the Brazilian Federal Police. The congressional representative shared records of several death threats received by him and Mr. Greenwald, including a demand of 10,000 dollars in return for not harming the couple's children, and requested the Federal Police to afford special protection.

Brazilian authorities did not condemn the violent threats and in some situations replicated a disinformation campaign launched online, suggesting that Mr. Greenwald and the news site colluded with foreign agents in a hacking effort to prepare these reports with the intent of personal political gain.

On 19 June, Brazilian senators supporting the Federal Government repeated these allegations in a hearing at the Senate with the Minister of Justice. On this same day, in a press interview, the Brazilian President, responding to questions on the revelations, alleged Mr. Miranda purchased his mandate as congressional representative and indicated he believed the work was a "plot".

I express grave concern about the repeated attacks against Mr Greenwald and his family. Furthermore, I express grave concern at the attacks against the *Intercept* and its editorial team. If the alleged facts are correct, they would constitute a clear violation of articles 19 in conjunction with article 2 of the International Covenant on Civil and Political Rights (ICCPR), which Brazil acceded to on 24 January 1992. More broadly, I express concern about the hostility expressed by members of the Senate and government against the above-mentioned persons in response to their revelations.

The rights to freedom of opinion and freedom of expression in article 19 "are essential for any society. They constitute the foundation stone for every free and democratic society", CCPR/C/GC/34 para. 2. A free, uncensored and unhindered press or other media "is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society", *id.* para. 13.

It is the obligation of States to "put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression", *id.* para. 23. This entails an obligation to refrain from such attacks. Under no circumstance "can an attack on a person, because of the exercise of his or her freedom of opinion or expression […] be compatible with article 19", *id.*

Furthermore, the State is under a positive obligation to prevent attacks against individuals by private actors. Consequently, the failure to exercise due diligence to prevent, investigate, punish or redress the harm caused by private persons or entities can equally give rise to responsibility by the State, CCPR/C/21/Rev.1/Add. 13 para. 8. The Human Rights Committee has confirmed that article 6 on the right to life also entails "a due diligence obligation to undertake reasonable positive measures, which do not impose on them disproportionate burdens, in response to reasonably foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the State", CCPR/C/GC/36 para. 21.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the ICCPR.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide information as to what measures have been taken to investigate the threats received by the above-mentioned individuals, and to prosecute and punish those responsible.

3. Please provide information as to what measures have been implemented to ensure the safety of the above-mentioned persons.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression